

Thus, a charitable contribution by a nonresident alien individual or a foreign corporation of property the sale or other disposition of which within the United States would have resulted in gain subject to tax under section 871(a) or 881 will be reduced only as provided in section 170(e)(1)(B) and paragraph (a)(2) or (3) of this section, but only if the property contributed is described in subdivision (i), (ii), or (iii) of subparagraph (2) of this paragraph. A charitable contribution by a nonresident alien individual or a foreign corporation of property the sale or other disposition of which within the United States would have resulted in gain subject to tax under section 871(a) or 881 will in no case be reduced under section 170(e)(1)(A) and paragraph (a)(1) of this section.

(c) *Allocation of basis and gain*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph:

(i) If a taxpayer makes a charitable contribution of less than his entire interest in appreciated property, whether or not the transfer is made in trust, as, for example, in the case of a transfer of appreciated property to a pooled income fund described in section 642(c)(5) and § 1.642(c)-5, and is allowed a deduction under section 170 for a portion of the fair market value of such property, then for purposes of applying the reduction rules of section 170(e)(1) and this section to the contributed portion of the property the taxpayer's adjusted basis in such property at the time of the contribution shall be allocated under section 170(e)(2) between the contributed portion of the property and the noncontributed portion.

(ii) The adjusted basis of the contributed portion of the property shall be that portion of the adjusted basis of the entire property which bears the same ratio to the total adjusted basis as the fair market value of the contributed portion of the property bears to the fair market value of the entire property.

(iii) The ordinary income and the long-term capital gain which shall be taken into account in applying section 170(e)(1) and paragraph (a) of this section to the contributed portion of the property shall be the amount of gain which would have been recognized as

ordinary income and long-term capital gain if such contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

(2) *Bargain sale.* (i) Section 1011(b) and § 1.1011-2 apply to bargain sales of property to charitable organizations. For purposes of applying the reduction rules of section 170(e)(1) and this section to the contributed portion of the property in the case of a bargain sale, there shall be allocated under section 1011(b) to the contributed portion of the property that portion of the adjusted basis of the entire property that bears the same ratio to the total adjusted basis as the fair market value of the contributed portion of the property bears to the fair market value of the entire property. For purposes of applying section 170(e)(1) and paragraph (a) of this section to the contributed portion of the property in such a case, there shall be allocated to the contributed portion the amount of gain that is not recognized on the bargain sale but that would have been recognized if such contributed portion had been sold by the donor at its fair market value at the time of its contribution to the charitable organization.

(ii) The term *bargain sale*, as used in this subparagraph, means a transfer of property which is in part a sale or exchange of the property and in part a charitable contribution, as defined in section 170(c), of the property.

(3) *Ratio of ordinary income and capital gain.* For purposes of applying subparagraphs (1)(iii) and (2)(i) of this paragraph, the amount of ordinary income (or long-term capital gain) which would have been recognized if the contributed portion of the property had been sold by the donor at its fair market value at the time of its contribution shall be that amount which bears the same ratio to the ordinary income (or long-term capital gain) which would have been recognized if the entire property had been sold by the donor at its fair market value at the time of its contribution as (i) the fair market value of the contributed portion at such time bears to (ii) the fair market value of the entire property at such time. In the case of a bargain sale,

Internal Revenue Service, Treasury

§ 1.170A-4

the fair market value of the contributed portion for purposes of subdivision (i) is the amount determined by subtracting from the fair market value of the entire property the amount realized on the sale.

(4) *Donee's basis of property acquired.* The adjusted basis of the contributed portion of the property, as determined under subparagraph (1) or (2) of this paragraph, shall be used by the donee in applying to the contributed portion such provisions as section 514(a)(1), relating to adjusted basis of debt-financed property; section 1015(a), relating to basis of property acquired by gift; section 4940(c)(4), relating to capital gains and losses in determination of net investment income; and section 4942(f)(2)(B), relating to net short-term capital gain in determination of tax on failure to distribute income. The fair market value of the contributed portion of the property at the time of the contribution shall not be used by the donee as the basis of such contributed portion.

(d) *Illustrations.* The application of this section may be illustrated by the following examples:

Example 1. (a) On July 1, 1970, C, an individual, makes the following charitable contributions, all of which are made to a church except in the case of the stock (as indicated):

Property	Fair market value	Adjusted basis	Recognized gain sold
Ordinary income property	\$50,000	\$35,000	\$15,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock held more than 6 months contributed to—			
(i) A church	25,000	21,000	4,000
(ii) A private foundation not described in section 170(b)(1)(E)	15,000	10,000	5,000
(2) Tangible personal property held more than 6 months (put to unrelated use by church)	12,000	6,000	6,000
Total	102,000	72,000	30,000

(b) After making the reductions required by paragraph (a) of this section, the amount of charitable contributions allowed (before application of section 170(b) limitations) is as follows:

Property	Fair market value	Reduction	Contribution allowed
Ordinary income property	\$50,000	\$15,000	\$35,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock contributed to:			
(i) The church	25,000	25,000
(ii) The private foundation	15,000	2,500	12,500
(2) Tangible personal property	12,000	3,000	9,000
Total	102,000	20,500	81,500

(c) If C were a corporation, rather than an individual, the amount of charitable contributions allowed (before application of section 170(b) limitation) would be as follows:

Property	Fair market value	Reduction	Contribution allowed
Ordinary income property	\$50,000	\$15,000	\$35,000
Property which, if sold, would produce long-term capital gain:			
(1) Stock contributed to:			
(i) The church	25,000	25,000
(ii) The private foundation	15,000	3,125	11,875
(2) Tangible personal property	12,000	3,750	8,250
Total	102,000	21,875	80,125

Example 2. On March 1, 1970, D, an individual, contributes to a church intangible property to which section 1245 applies which has a fair market value of \$60,000 and an adjusted basis of \$10,000. At the time of the contribution D has used the property in his business for more than 6 months. If the property had been sold by D at its fair market value at the time of its contribution, it is assumed that under section 1245 \$20,000 of the gain of \$50,000 would have been treated as ordinary income and \$30,000 would have been long-term capital gain. Under paragraph (a)(1) of this section, D's contribution of \$60,000 is reduced by \$20,000.

Example 3. The facts are the same as in *Example (2)* except that the property is contributed to a private foundation not described in section 170(b)(1)(E). Under paragraph (a) (1) and (2) of this section, D's contribution is reduced by \$35,000 (100 percent of the ordinary income of \$20,000 and 50 percent of the long-term capital gain of \$30,000).

Example 4. (a) In 1971, E, an individual calendar-year taxpayer, contributes to a church stock held for more than 6 months which has a fair market value of \$90,000 and an adjusted basis of \$10,000. In 1972, E also contributes to a church stock held for more than 6 months which has a fair market value of \$20,000 and an adjusted basis of \$10,000. E's contribution base for 1971 is \$200,000; and for 1972, is

\$150,000. E makes no other charitable contributions for these 2 taxable years.

(b) For 1971 the amount of the contribution which may be taken into account under section 170(a) is limited by section 170(b)(1)(D)(i) to \$60,000 (\$200,000×30%), and A is allowed a deduction for \$60,000. Under section 170(b)(1)(D)(ii), E has a \$30,000 carryover to 1972 of 30-percent capital gain property, as defined in paragraph (d)(3) of § 1.170A-8. For 1972 the amount of the charitable contributions deduction is \$45,000 (total contributions of \$50,000 [\$30,000+\$20,000] but not to exceed 30% of \$150,000).

(c) Assuming, however, that in 1972 E elects under section 170(b)(1)(D)(iii) and paragraph (d)(2) of § 1.170A-8 to have section 170(e)(1)(B) apply to his contributions and carryovers of 30-percent capital gain property, he must apply section 170(d)(1) as if section 170(e)(1)(B) had applied to the contribution for 1971. If section 170 (e)(1)(B) had applied in 1971 to his contributions of 30-percent capital gain property, E's contribution would have been reduced from \$90,000 to \$50,000, the reduction of \$40,000 being 50 percent of the gain of \$80,000 (\$90,000-\$10,000) which would have been recognized as long-term capital gain if the property had been sold by E at its fair market value at the time of its contribution to the church. Accordingly, by taking the election into account, E has no carryover of 30-percent capital gain property to 1972 since the charitable contributions deduction of \$60,000 allowed for 1971 in respect of that property exceeds the reduced contribution of \$50,000 for 1971 which may be taken into account by reason of the election. The charitable contributions deduction of \$60,000 allowed for 1971 is not reduced by reason of the election.

(d) Since by reason of the election E is allowed under paragraph (a)(2) of this section a charitable contributions deduction for 1972 of \$15,000 (\$20,000 - [(\$20,000 - \$10,000)×50%]) and since the \$30,000 carryover from 1971 is eliminated, it would not be to E's advantage to make the election under section 170(b)(1)(D)(iii) in 1972.

Example 5. In 1970, F, an individual calendar-year taxpayer, sells to a church for \$4,000 ordinary income property with a fair market value of \$10,000 and an adjusted basis of \$4,000. F's contribution base for 1970 is \$20,000, and F makes no other charitable contributions in 1970. Thus, F makes a charitable contribution to the church of \$6,000 (\$10,000-\$4,000 amount realized), which is 60% of the value of the property. The amount realized on the bargain sale is 40% (\$4,000/\$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of \$1,600 (\$4,000 adjusted basis × 40%) is allocated under § 1.1011-2(b) to the noncontributed portion of the property, and F recognizes \$2,400 (\$4,000 amount realized less \$1,600 adjusted basis) of

ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, F's contribution of \$6,000 is reduced by \$3,600 (\$6,000 - [\$4,000 adjusted basis × 60%]) (i.e., the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of \$2,400 consists of the portion (\$4,000 × 60%) of the adjusted basis not allocated to the noncontributed portion of the property. That is, the reduced contribution consists of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is \$6,400 (\$4,000 + \$2,400).

Example 6. In 1970, G, an individual calendar-year taxpayer, sells to a church for \$6,000 ordinary income property with a fair market value of \$10,000 and an adjusted basis of \$4,000. G's contribution base for 1970 is \$20,000, and G makes no other charitable contributions in 1970. Thus, G makes a charitable contribution to the church of \$4,000 (\$10,000 - \$6,000 amount realized), which is 40% of the value of the property. The amount realized on the bargain sale is 60% (\$6,000/\$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of \$2,400 (\$4,000 adjusted basis × 60%) is allocated under § 1.1011-2(b) to the noncontributed portion of the property, and G recognizes \$3,600 (\$6,000 amount realized less \$2,400 adjusted basis) of ordinary income. Under paragraphs (a)(1) and (c)(2)(i) of this section, G's contribution of \$4,000 is reduced by \$2,400 (\$4,000 - [\$4,000 adjusted basis × 40%]) (i.e., the amount of ordinary income that would have been recognized on the contributed portion had the property been sold). The reduced contribution of \$1,600 consist of the portion (\$4,000×40%) of the adjusted basis not allocated to the noncontributed portion of the property. That is, the reduced contribution consists of the portion of the adjusted basis allocated to the contributed portion. Under sections 1012 and 1015(a) the basis of the property to the church is \$7,600 (\$6,000+\$1,600).

Example 7. In 1970, H, an individual calendar-year taxpayer, sells to a church for \$2,000 stock held for not more than 6 months which has an adjusted basis of \$4,000 and a fair market value of \$10,000. H's contribution base for 1970 is \$20,000, and H makes no other charitable contributions in 1970. Thus, H makes a charitable contribution to the church of \$8,000 (\$10,000-\$2,000 amount realized), which is 80% of the value of the property. The amount realized on the bargain sale is 20% (\$2,000/\$10,000) of the value of the property. In applying section 1011(b) to the bargain sale, adjusted basis in the amount of \$800 (\$4,000 adjusted basis × 20%) is allocated under § 1.1011-2(b) to the noncontributed portion of the property, and H recognizes \$1,200 (\$2,000 amount realized less \$800 adjusted